

Appl. No. 10/811,527  
Docket No. 8768MD2  
Amdt. dated April 20, 2007  
Reply to Office Action mailed on December 21, 2006  
Customer No. 27752

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## REMARKS

### Claim Status

Claims 1, 2, 5, 6, 9, 10, 12, 13, 15-35 are pending in the present application.

Claim 1 has been amended to more clearly define the absorbent article in accordance with the teachings of the specification, for example, at page 11, lines 12-13 and page 8, lines 3-14. Claims 5, 12 and 13 have been amended to more clearly define the absorbent article in accordance with the teachings of the specification, for example, at page 7, lines 11-16. Claims 9, 10, 20-22 and 24 have been amended as to matters of form or to correct a typographical mistake. Claims 3, 4, 7, 8, 11 and 14 have been canceled. New Claims 28-35 have been added. Support for Claim 28 may be found, for example, at page 11, lines 11-14, support for Claim 29 may be found, for example, at page 8, lines 21-24 and page 10, lines 15-20, support for Claims 30-35 may be found, for example, at page 12, lines 25-28, page 13, lines 18-26, page 6, lines 5-7, page 7, page 8, lines 3-14, and Fig. 2B.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

### Rejection Under 35 USC §102 Over Odorzynski

Claims 1, 5, 6, 8-10, 12-15, 17 and 23-27 stand rejected under 35 USC. 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050). With respect to the rejected claims, the Office asserts the following:

- Odorzynski teaches diaper 10 comprising backsheet 12, topsheet 14 and absorbent core 16.
- The elastomeric hot melt adhesive is applied to at least any one of the components of diaper 10, e.g. backsheet 12.
- The adhesive is applied via slot coating and therefore forms a continuous geometric pattern of rectilinear or curvilinear stripes on the diaper component substrate with a predetermined spacing between stripes.

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- Since the backsheet 12 is a nonwoven thermoplastic film and the adhesive is a hot melt adhesive, the Office asserts that the adhesive is capable of being applied to the substrate in such a manner as to be partially penetrate said substrate.
- Odorzynski teaches an elasticized area width of 1.27-7.62 mm and a thickness of 2.54 - 25.4 mm. (Col. 6, lines 52-58).
- Since Odorzynski teaches slot coating, the spacing between stripes can be predetermined so as to be nonuniform.
- Odorzynski teaches strands or ribbons of the adhesive film that are applied to define an elasticized area, therefore the strands must overlap to form boundaries and a continuous elasticized area within the boundaries. (Col.6, lines 21-27).
- Odorzynski teaches waist elastics 38, leg cuffs 36 and fastening tabs 40 manufactured from the same adhesive film composition, therefore a component of diaper 10 having the elastic composition therein has an additional elastic material that is capable of being manufactured from an alternate suitable elastomeric adhesive.
- Odorzynski teaches applying the elastic adhesive composition to at least one component of diaper 20. (Col 5. lines 49-51).
- Odorzynski teaches that backsheet 12 is comprised of a nonwoven polyethylene web. (Col. 2, lines 35-38).
- Odorzynski teaches that the component of the diaper containing the adhesive is necked. (Col 6. lines 1-7).
- Odorzynski teaches the elastic adhesive in film form sandwiched between the topsheet and backsheet to form an elasticized area. (Col. 5, lines 63-67).

Applicant respectfully traverses these rejections.

First, the Office asserts that Applicants did not recite that the substrate is "elastic" in the claims. Contrary to this assertion, Applicants are not trying to claim an "elastic

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substrate.” Rather, Applicants submit that the absorbent article as recited in claim 1 comprises a substrate having an elastomeric composition printed thereon, not an “elastic substrate.”

Further, Applicants submit that Odorzynski fails to teach or suggest each and every limitation of the invention recited in independent Claim 1, such that there is a failure to anticipate Applicants’ invention. Odorzynski relates to a disposable absorbent article that includes at least one elasticized area formed from an elastomeric, hot melt, pressure-sensitive adhesive that is used to bond a first and second component to one another. The reference, however, does not teach or suggest an article with an elastic component comprising a printed elastomeric composition applied in a predetermined geometric pattern wherein the pattern comprises at least two differing elastomeric members selected from the group consisting of rectilinear stripes, curvilinear stripes, triangles, trapezoids, squares, parallelograms, polygons, ellipses, circles and combinations thereof. Rather, Odorzynski merely teaches application of the disclosed hot melt adhesive via spraying, film forming and slot coating, i.e. a uniform, streamlined flow of adhesive is squeezed out by gravity or under pressure through the exit slot of a die and onto the substrate.

Although this applied strand or ribbon is taught by the patentee to be stretched or thinned, there is no teaching of at least two differing elastomeric members being applied to a component on the article wherein the elastomeric members are parallel or non-parallel with respect to one another in a single component as is required by independent Claim 1. Since such is not taught or suggested by the reference, there can be no anticipation of the rejected claims by Odorzynski. Applicant therefore submits that the rejection of these claims is improper and it respectfully requests reconsideration and withdrawal of the rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as contained in the .

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.. claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Because Odorzynski fails to teach or disclose every element of independent claim 1, Applicants assert that independent claim 1 is in condition for allowance. Further, because claims 5, 6, 8-10, 12-15 17 and 23-27 depend directly or indirectly from Claim 1, they too are not anticipated by Odorzynski and therefore, are in condition for allowance. Applicants also assert that Odorzynski fails to teach or disclose every element of Claims 28-35 and thus are also in condition for allowance.

Rejections Under 35 USC §103(a)

Over Odorzynski or Odorzynsk in view of Himes

Claims 16 and 18-22 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski. The Office has raised the following points with respect to Odorzynski's disclosures and the present invention:

- With respect to Claim 16: Odorzynski teaches selecting the viscosity of the adhesives that can involve mixing adhesives as well as heating them. Odorzynski does not explicitly teach two different adhesives, however Odorzynski does teach applying the adhesives either by spray coating or film forming (Cal. 6, lines 13-20) which would allow the application of different elastic adhesive compositions to one substrate. Examiner asserts therefore that it would be obvious to modify the adhesive area taught by Odorzynski so as to be comprised of two different adhesive compositions applied in two different patterns.
- With respect to Claims 18, 19, 20, & 22: Odorzynski does not explicitly teach different elastic adhesives disposed on different components of diaper 10. However, since Odorzynski teaches various application methods for the elastic adhesive composition, various suitable materials for the composition itself, and teaches applying an adhesive to at least one component of diaper 10 (e.g. fastening tabs 40 to topsheet 14), it would be obvious to one of ordinary skill in the art to apply different adhesives in different patterns to different components of diaper 10, said differing adhesives exhibiting different elastic properties.

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- With respect to Claim 21: Fastening tabs 40 comprising an elastic adhesive form a right angle with topsheet 14 containing an elastic adhesive.

In order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* Applicants respectfully traverse this rejection because the Office Action fails to establish a *prima facie* case of obviousness.

As detailed above, Odorzynski fails to teach or even suggest the requisite elements of the article of Claim 1. In particular, there is no teaching of an article with an elastic component comprising a printed elastomeric composition applied in a predetermined geometric pattern wherein the pattern comprises at least two differing elastomeric members selected from the group consisting of rectilinear stripes, curvilinear triangles, trapezoids, squares, parallelograms, polygons, ellipses, circles and combinations thereof. In addition, there is no teaching of at least two differing elastomeric members being applied to a component on the article wherein the elastomeric members are parallel or non-parallel with respect to one another in a single component as is required by independent Claim 1.

Because Odorzynski fails to teach or suggest all of the claim limitations of independent Claim 1, Applicants assert that independent claim 1 is in condition for allowance. Further, because claims 5, 6, 8-10, 12-15 17 and 23-27 depend directly or indirectly from Claim 1, they too are nonobvious over the cited reference and are in condition for allowance. Applicants also assert that Odorzynski fails to teach or disclose all of the claim limitations of Claims 28-35 and thus are also in condition for allowance.

Claims 2-4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski in view of Himes (U.S. Patent No. 5,304,599). The Office states that "[w]ith respect to Claims 2-4: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric

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polymer and a tackifying resin having a percent set of 9%. ('599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9%."

Applicant traverses this rejection, for the same reasons detailed above. Himes does not remedy Odorzynski's shortcoming of a failed teaching of an article comprising an elastic component comprising a printed elastomeric composition applied in a predetermined geometric pattern wherein the pattern comprises at least two differing elastomeric members selected from the group consisting of rectilinear stripes, curvilinear stripes, triangles, trapezoids, squares, parallelograms, polygons, ellipses, circles and combinations thereof. In addition, Himes does not remedy Odorzynski's shortcoming of a failed teaching of at least two differing elastomeric members being applied to a component on the article wherein the elastomeric members are parallel or non-parallel with respect to one another in a single component as is required by independent Claim 1. Rather, Himes focuses on a particular extrudable elastomeric composition that comprises an elastomeric polymer and a tackifying resin where the composition is formed into an elastic sheet having a stress relaxation of less than about 30 percent. Therefore, even application of Himes fails to yield a combination that amounts to a semblance of the stretch composite of Claim 1.

It is well settled that references relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of amended Claim 1, the Office Action has not established a *prima facie* case of obviousness and has not placed the presently claimed article in the possession of the public. Further, because claims 5, 6, 8-10, 12-15 17 and 23-27 depend directly or indirectly from Claim 1, they too are nonobvious over the cited reference and are in condition for allowance.

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Conclusion

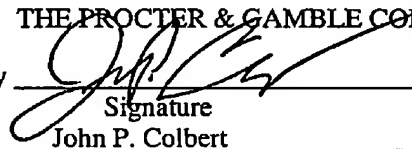
In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 USC §§'s 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 2, 5, 6, 9, 10, 12, 13, 15-35 is respectfully requested.

Respectfully submitted,

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